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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1614

ELLIS C. MacDOUGALL, *Commission of Correction,*
State of Connecticut, and
FREDERICK E. ADAMS, *Warden,*
Connecticut Correctional Institution, Somers, Connecticut

PETITIONERS

v.

DONALD JOSEPH LaREAU
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The petitioners, Ellis C. MacDougall, Commissioner of Correction, State of Connecticut, and Frederick E. Adams, Warden, Connecticut Correctional Institution, Somers, Connecticut, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit. Said judgment and opinion were entered on December 15, 1972. Motions for rehearing in banc pursuant to Rule 35, Federal Rules of Appellate Procedure and for rehearing pursuant to Rule 40, Federal Rules of Appellate Procedure were timely filed.

By Order dated January 5, 1973, the Court ordered the filing of briefs on the motion for rehearing.

By Orders each dated March 6, 1973, both motions were denied. Copies of the above orders are presented on the Appendix at pp. ~~16a~~ 15a — 18a.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Second Circuit is reported in 473 F.2d 974. The case was on appeal from the United States District Court for the District of Connecticut. The opinion of the District Court is not as yet reported. A copy of the opinion of the District Court appears in the Appendix at pp. 22a — 36a. The decision of the Second Circuit appears in the Appendix at pp. 2a — 14a.

Prior to commencing the instant action in the District Court, the plaintiff made the same claims as are involved herein in a mandamus action in the Superior Court for Hartford County. Judgment was entered against him on June 8, 1970. The Superior Court opinion is not reported. A copy of said opinion in *LaReau v. Warden.* Docket Numbers 162759 and 163871 appears on pp. 19a — 21a of the Appendix.

Certification for permission to appeal to the Connecticut Supreme Court pursuant to Section 52-470, Connecticut General Statutes was sought and denied.

No attempt was made to seek review from the Superior Court opinion in the United States Supreme Court.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Second Circuit was rendered on December 15, 1972. Motions for rehearing in banc pursuant to Rule 35, Federal Rules of Appellate Procedure and for rehearing pursuant to Rule 40, Federal Rules of Appellate Procedure were timely filed. Both motions were denied on March 6, 1973. This petition for a writ of certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).
~~Page 8a Corr~~.

QUESTIONS PRESENTED

1. Did the inmate's confinement in the so-called "strip cell" at the Connecticut Correctional Institution, Somers, constitute cruel and unusual punishment within the purview of the Eighth Amendment?

2. Do the doctrines of res judicata and/or collateral estoppel operate to bar the inmate from relitigating the same issues in the District Court which he had previously litigated and upon which a final judgment had been entered against him in the State Superior Court?

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the cruel and unusual punishment clause of the Eighth Amendment to the United States Constitution.

STATEMENT OF THE CASE

The plaintiff is an inmate of the Connecticut Correctional Institution, Somers. At all times pertinent to this complaint he was a sentenced inmate. His present sentence, which was imposed on May 29, 1970, is for escape (Two Counts). Prior to the imposition of this sentence he had also been serving a sentence imposed on February 2, 1966 for indecent assault. He discharged from this latter sentence on December 22, 1970.

He brings the instant action under Title 42, Sec. 1983, U.S.C. claiming the deprivation under color of state law of a number of federally protected rights. By way of relief he seeks monetary damages in the amount of $50,000.00 and a permanent injunction.

The District Court dismissed all of the plaintiff's claims. In his appeal to the United States Court of Appeals, Mr. LaReau challenged only the District Court's ruling which held that his confinement in a so-called strip cell did not constitute cruel and unusual punishment under the Eighth Amendment and that his right to practice his religion under the First Amendment was not unlawfully denied him.

The Court of Appeals affirmed the District Court on the First Amendment claim but reversed and remanded on the Eighth Amendment claim. Judge Moore dissented on the reversal.

In this petition, the petitioners claim that the Court of Appeals erred in reversing on the Eighth Amendment claim and respectfully request this Court to review and sustain this claim.

On February 3, 1970, correctional officers found in LaReau's possession certain contraband items, including what was variously described by witnesses as "a rope fashioned from parts of a towel" or towels or "a string made from the edges of bed sheets." Because LaReau at that time was in punitive segregation, these items were contraband under prison regulations. A disciplinary proceeding followed on February 5. LaReau was ordered confined in a strip cell for an "indefinite period." He in fact served five days in the strip cell, from February 6 to February 11, 1970.

REASONS FOR GRANTING THIS WRIT

Rule 19 of the Rules of this Court provides, in part, that one of the factors considered in granting certiorari is whether a ". . . a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter . . ." . Confinement under conditions similar in all relevant respects to the conditions held in violation of the Eighth Amendment in this case was held to be constitutionally unobjectionable by the Third Circuit in *Ford v. Board of Managers of the New Jersey State Prison,* 407 F.2d 937 (1969) and by the Seventh Circuit in *Adams v. Pate,* 445 F.2d 105 (1971).

Further, in the instant case the trial court (Judge Clarie) personally viewed the cell in question. He had an opportunity, not available to the Court of Appeals, to experience this cell in terms of ventilation, temperature, dryness, etc. The trial court also, of course, viewed the plaintiff during the trial.

In this regard the petitioner respectfully urges the court to adopt the reasoning of Judge Moore in his dissent:

> "The most serious flaw in the Court's decision is its determination that the conditions in the Somers strip cell 'seriously threatened the physical and mental soundness of its unfortunate occupant.' The Court says that it accepts Judge Clarie's 'careful and detailed findings of fact.' These findings disclose that LaReau had seen the prison's psychiatrist and psychologist, that the prison psychiatric department had an extensive file on LaReau — including several psychiatric evaluations — and that he was visited weekly by the prison doctor. Despite the presence of these medically trained personnel who were acquainted with LaReau and presumably aware of the possible hazards of various aspects of prison life (including the strip cell), the Court today offers its own judgment that the strip cell conditions do, as a matter of law, threaten an inmate's health and sanity. In my opinion it is not our appellate function to ignore the findings of a Judge who, after personally viewing the conditions at Somers, found them to be neither cruel nor unusual. But it is perhaps an even more serious error to substitute for the collective medical expertise of the Somers doctors this Court's judgment that conditions

there threatened an inmate's physical and mental soundness. Surely, such a determination should be left to those with knowledge of medicine, psychiatry, and psychology. Such medical judgment should be entitled to great weight in our Court, especially in a case such as this, where the experts also had personal knowledge of the inmate and, presumably, of the conditions he faced."

LaReau v. MacDougall, 473 F.2d 974, 981.

The objectionable feature of the strip cell in the majorities view is the oriental toilet. There was no finding of fact to warrant the conclusion of the majority that the plaintiff had ". . . to live, eat and perhaps sleep in close confinement with his own human waste. . ." . *LaReau v. MacDougall,* supra p. 978. The use of the word "perhaps" clearly shows that the majority of the Court was going beyond the unchallenged findings of fact by the trial court.

The cases of *Wright v. McMann,* 387 F.2d 519 (2nd Cir. 1967) and *Sostre v. McGinnis,* 442 F.2d 178 (2d Cir. 1971), cert denied 404 U.S. 1049, which were relied upon by the Court are clearly distinguishable for the reasons set forth in Judge Moore's dissent.

THIS CASE PRESENTS AN IMPORTANT QUESTION OF FEDERAL AND STATE LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

Rule 19 of the rules of this Court further provides, in part, that the case involves ". . . an important question of federal law which has not been, but should be, settled by this court;".

Prior to bringing the instant action in the District Court, the inmate raised the same claim, as is raised herein, in an action which he brought in the Superior Court for Hartford County. In the State Court proceedings, an attorney was appointed to represent him and a full trial, taking a day and one half, was held to hear his claims.

As did Judge Clarie in the District Court, the Superior Court (Judge Sidor) personally viewed and inspected the so-called "strip cell" about which the inmate complains. As did the District Court, the State Court, rejected the inmate's claims concerning the "strip cell". Judge Sidor's Memorandum of Decision dated June 8, 1970,

is at pp. 19a-21a of the petitioner's appendix. The Superior Court denied a motion seeking permission to obtain review in the State Supreme Court. No attempt was made to seek review in the United States Supreme Court.

In their answer in the District Court, the petitioners raised, as an affirmative defense, the claim that the doctrines of res judicata and/or collateral estoppel barred the inmate from relitigating in the District Court, the same claims which were made before and dismissed by the Superior Court. The District Court rejected this claim, as did the Court of Appeals.

The petitioners are not claiming that Mr. LaReau cannot present this Civil Rights Claim in the Federal Court without having exhausted his State legal remedies. What the petitioners do claim is that since he voluntarily chose to present these claims to the State Superior Court, he cannot, after losing there, then retry his case in the District Court. He should be required to seek review of the State Court decision in the United States Supreme Court and not be allowed to obtain review via a retrial in the District Court.

In the State of Connecticut, as in all states in the nation, the volume of legal actions challenging conditions in correctional institutions has increased dramatically in the past few years. The appellees do not quarrel with the obvious proposition that any inmate has the unquestionable right to present his alleged grievances before a court and seek redress. What we do dispute is the proposition that state officers have the duty of defending their actions twice on the same issue for the same inmate.

The instant case illustrates the problem with which the State is confronted.

The inmate's trial in the Superior Court consumed a day and one-half and over 270 pages of testimony. In the District Court, the inmate had two days of trial time and nearly 500 pages of testimony.

During each trial the Commissioner of Corrections, the Deputy Warden of the State prison and numerous correctional officers and employees of the prison had to leave their duties to appear in Court. The Commissioner, above, devoted a good full day to to each of the inmate's trials. If state officers are to be exposed to

this enormous expenditure of time for each inmate law suit which is commenced, then how can they be expected to administer a correctional system especially during this period when the judicial, administrative, inmate and social emphasis with regard to correctional practices is on reform, progress and improvement.

As noted above, the appellees do not complain about an inmate's right to challenge correctional practices in Court. This is the civilized manner in which to resolve a dispute. Nor do they complain about having to expend time in Court explaining, defending and justifying their practices.

But there is simply no need to entitle an inmate to try his claims in a federal court after he has voluntarily presented the same claims to a state court.

In short, the petitioners claim is that every inmate has a right to his day in Court but not to two days on the same issue.

> "The Civil Rights Act affords a remedy defined by federal statute and redressable in the federal courts. But where, as here, the same facts have been the subject of state actions and final judgments have been entered there, the principle of res judicata applies."
>
> *Johnson v. Dept. of Water and Power of The City of Los Angeles, et al,* 450 F.2d 294, 295 (9th Cir. 1971).

The same rule has been applied in this Circuit in *Taylor v. New York City Transit Authority,* 433 F.2d 665 (2nd Cir. 1970). See also: *Coogan v. Cincinnati Bar Association,* 431 F.2d 1209 (6th Cir. 1970).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this case presents an issue involving an important issue of Federal law and a Circuit Court decision which is in conflict with the decisions of other Circuits. The petitioners respectfully request that the Eighth Amendment holding of the Court of Appeals be reversed and vacated or that certiorari be granted to review the lower court's decision.

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CERTIFICATION

This is to certify that on this 1st day of June, 1973, two copies of this Petition for Writ of Certiorari and Appendix thereto were hand delivered to the office of Attorney Hubert J. Santos, counsel for the Respondent.

STEPHEN J. O'NEILL
Assistant Attorney General

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1614

ELLIS C. MacDOUGALL, *Commissioner of Correction,*
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 664 — September Term, 1971.

(Argued June 28, 1972 Decided December 15, 1972.)

Docket No. 71-1555

DONALD JOSEPH LAREAU,
Petitioner-Appellant,

vs.

ELLIS C. MACDOUGALL, *Commissioner of Correction,*
State of Connecticut, and
FREDERICK E. ADAMS, *Warden,*
Connecticut Correctional Institution, Somers, Connecticut

Respondents-Appellees.

Before:

MOORE, SMITH and TIMBERS,
Circuit Judges.

Appeal from judgment for defendants entered after trial on the merits in the District of Connecticut, T. Emmet Clarie, *District Judge,* in civil rights action brought by state prisoner alleging violations of his rights under First Amendment (free exercise of religion clause) and Eighth Amendment (cruel and unusual punishment clause) in connection with his confinement in a strip cell at the Connecticut state prison.

Affirmed as to dismissal of First Amendment claim; reversed and remanded as to dismissal of Eighth Amendment claim.

HUBERT J. SANTOS, Enfield, Conn., *for Petitioner-Appellant.*

STEPHEN J. O'NEILL, Asst. Atty. Gen., State of Conn., Hartford, Conn. (Robert K. Killiam, Atty. Gen., State of Conn., Hartford, Conn., on the brief), *for Respondents-Appellees.*

TIMBERS, *Circuit Judge:*

This appeal presents again questions which are being raised with increasing frequency by state prisoners with respect to alleged unconstitutional conduct by state prison officials. The issues are raised here in the context of alleged violations of a state prisoner's First and Eighth Amendment rights in connection with his confinement in a strip cell at the Connecticut state prison.

Appellant LaReau, presently an inmate of the Connecticut Correctional Institution at Somers, Connecticut,[1] appeals from a judgment for defendants entered on May 25, 1971 after a four day trial on the merits in the District Court for the District of Connecticut, T. Emmet Clarie, *District Judge.* The judgment dismissed LaReau's action brought under the Civil Rights Act, 42 U.S.C. § 1983 (1970), and its jurisdictional implementation, 28 U.S.C. § 1343 (1970), seeking equitable relief and $50,000 damages for alleged violations of his rights under the First Amendment (free exercise of religion clause) and the Eighth Amendment (cruel and unusual punishment clause), as well as other alleged

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[1] LaReau was convicted in the Superior Court for Hartford County on February 2, 1966 of indecent assault and was sentenced from 2 to 6 years in prison. He was paroled on January 29, 1969 but was returned to prison for parole violation on July 25, 1969, having been arrested for forgery on July 5. He escaped from the Manchester Police Station on August 25, 1969 and from the Hartford Correctional Center on November 16, 1969. On both occasions he had been transferred temporarily from Somers to those facilities to await trial. On both occasions he was recaptured shortly after his escape. On May 29, 1970, he was convicted in the Superior Court for Hartford County of the crime of escape and is presently serving his sentence of from 5 to 11 years for that conviction.

constitutional violations not raised on appeal.[2] After trial, Judge Claire filed a well reasoned opinion setting forth detailed findings of fact and conclusions of law, ___ F.Supp. ___ (D. Conn. 1971), which we affirm in all respects except as indicated below. In short, we affirm on the First Amendment claim and reverse and remand on the Eighth Amendment claim.

I

Appellant's Eighth Amendment claim is that a disciplinary measure imposed upon him while imprisoned at the Connecticut Correctional Institution at Somers, namely, his confinement in a so-called "strip cell", constituted cruel and unusual punishment.

The facts are as follows.[3] On February 3, 1970, correctional officers found in LaReau's possession certain contraband items,

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[2] Prior to commencing the instant federal action, LaReau petitioned the Superior Court for Hartford County for a writ of habeas corpus. He alleged, among other illegalities, the same constitutional violations charged here. The Superior Court dismissed the petition on the merits in an opinion rejecting the First and Eighth Amendment claims.

The Superior Court denied LaReau permission to appeal to the Connecticut Supreme Court. LaReau did not seek review in the Supreme Court of the United States.

Appellee contends that this decision by the Superior Court precludes this Court, under the doctrines of res judicata and collateral estoppel, from reconsidering LaReau's claims. These principles might be binding were it not for the fact that the Superior Court clearly acted in excess of its authority in ruling on these claims. It is settled in Connecticut that the Superior Court is without power in a "habeas corpus proceeding to inquire into the propriety or legality of any punishment that may have been imposed upon the petitioner". *Saia v. Warden,* 25 Conn. Supp. 519, 520-21 (Super. Ct., Hartford County, 1964). Under Connecticut law, when a party invokes the jurisdiction of the court with a petition for a writ of habeas corpus, the court is empowered to decide only the validity of the judgment under which the petitioner was imprisoned. *Flaherty v. Warden,* 155 Conn. 36, 229 A.2d (362 (1967); *Wojculewicz v. Cummings,* 143 Conn. 624, 124 A.2d 886 (1956). Since the Superior Court's decision here on the claims of mistreatment by prison officials, therefore, would have no binding effect on other state courts, that decision does not preclude a federal court from hearing those claims.

[3] In view of Judge Clarie's careful and detailed findings of fact, ___ F. Supp. ___, which we accept, Fed.R.Civ.P. 52(a), we shall not refer in this opinion to any more of the facts than are necessary to an understanding of the issues upon which we rule.

including what was variously described by witnesses as "a rope fashioned from parts of a towel" or towels or "a string made from the edges of bed sheets". Because LaReau at that time was in punitive segregation, these items were contraband under prison regulations. A disciplinary proceeding followed on February 5. LaReau was ordered confined in a strip cell for an "indefinite period". He in fact served five days in the strip cell, from February 6 to February 11.[4] He contends that the strip cell in which he was confined is per se unconstitutional or, alternatively, that it was grossly excessive punishment for his violation. We hold, under the circumstances of this case, that his confinement in the strip cell violated his Eighth Amendment rights.

The strip cell was described by witnesses at the trial as follows. Its dimensions are six feet wide, ten feet deep and eight feet high, approximately the same size as other cells in the prison. The cell has an outer door made of solid steel and an inner door made of steel bars, with a space of two feet between the two doors. The outer door has a two square foot window at eyelevel which can be covered by a metal plate. Prison officials testified that the window usually is not closed unless the prisoner creates a disturbance. The walls and floor of the cell are cement. The walls have no windows. There is a 100 watt light outside the cell which shines through a hole at the rear of the cell and can be turned on and off only by the guard. Judge Clarie found that this light was turned on for LaReau only at meal times and when he was allowed to write. Thus, it appears that LaReau for substantial periods of time was in almost total darkness when the light was off and the window in the door was closed. He was also in total silence since the walls and door did not permit transmission of sound.

The cell contained no sink, water fountain or commode. The only facility for disposing of human waste was a device called a "Chinese toilet". It was merely a hole in the floor in the corner of the cell covered with a grate. It was flushed with water by a manually-controlled valve operated from *outside* the cell.

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[4] LaReau also claims that he was placed in the strip cell from October 5 to October 12 for writing an "insolent and disrespectful" letter to Assistant Warden Stout. The evidence at trial indicated, however, that he was actually confined in a "maximum punitive" cell which differs from the "strip cell" in several respects and which is not attacked on this appeal.

A prisoner confined to a strip cell apparently is permitted to have a toothbrush and toothpaste upon request. It is normal practice for the prisoner to receive three meals per day. A glass of water is given at least twice daily. A mattress is provided between 3 P.M. and 8 A.M. and blankets are supplied when the room temperature so requires.

The prisoner is not allowed to have reading materials (they would be useless in the darkness anyway), except a Bible upon request. He is given no opportunity to exercise. He has no one to talk to or communicate with in any way except that he is permitted to write. A prisoner can be confined in such a cell for a maximum of eight days, but that period can be extended upon approval by the Commissioner of Corrections.

The cruel and unusual punishment clause does not forbid all excessive or severe penalties. See *Robinson v. California*, 370 U.S. 660 (1962).[5] Nor does it give constitutional dimension to the theories of penologists on what is the most appropriate disposition of an offender; the language of the clause is ill-suited to the performance of such a task. It condemns only that punishment which is "barbarous" or "shocking to the conscience". See *Church v. Hegstrom*, 416 F.2d 449, 451 (2 Cir. 1969). And the "conscience" the clause is concerned with is the collective conscience of our society, not the conscience of judges or prison officials as individuals. See *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

Courts must be particularly careful not to intercede needlessly on behalf of an inmate engaged in a dispute with prison administrators. See *Landman v. Peyton*, 370 F.2d 135, 141 (4 Cir. 1966); *Cullman v. California Dept. of Corrections*, 267 F.Supp. 524 (N.D. Cal. 1967). The Eighth Amendment should not be used to divest prison authorities of the administrative discretion necessary to maintain order and discipline in penal institutions. Unless a prisoner is exemplarily punished for violating a prison regulation, he

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[5] There can be no doubt today that the Eighth Amendment's prohibition against cruel and unusual punishment applies to the states. *Robinson v. California, supra.* It also is clear that a state prisoner may bring an action under the Civil Rights Act. *Cooper* v. *Pate*, 378 U.S. 546 (1964). See *Rodriguez* v. *McGinnis*, 456 F.2d 79 (2 Cir. 1972) (en banc), *cert. granted*, 407 U.S. 919 (1972), and authorities cited therein at 81. See also *United States ex rel. Walker* v. *Mancusi*, 467 F.2d 51, 53-54 (2 Cir. 1972).

and other prisoners will not be deterred from committing further offenses; and the determination of what punishment is effective and fair considering the nature of the offense and the character of the offender ordinarily should be left to the informed judgment of prison authorities. But prison officials, no less than sentencing judges, are bound by the strictures of the Eighth Amendment. Disciplinary measures that violate civilized standards of human decency are proscribed.

We hold that the conditions to which LaReau was subjected in the strip cell fall below the irreducible minimum of decency required by the Eighth Amendment. Enforced isolation and boredom are permissible methods of discipline, although they might not remain so if extended over a long period of time. But the conditions here went beyond mere coerced stagnation. We cannot approve of threatening an inmate's sanity and severing his contacts with reality by placing him in a dark cell almost continuously day and night. Nor can we find any justification for denying a man the ability to maintain his personal cleanliness. What is most offensive to this Court was the use of the "Chinese toilet". Causing a man to live, eat and perhaps sleep in close confines with his own human waste is too debasing and degrading to be permitted. The indecent conditions that existed in this Somers prison strip cell seriously threatened the physical and mental soundness of its unfortunate occupant.[6] In order to preserve the human dignity of inmates and the standards of humanity embraced by our society, we cannot sanction such punishment.[7] See *Trop* v. *Dulles, supra.*

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[6] Even if the strip cell could be justified for serious offense, it was a grossly severe penalty for LaReau's offense. The possession of contraband, even contraband which might conceivably be an instrument of escape, is not sufficiently culpable to justify the extreme deprivation to which LaReau was subjected in the strip cell. Indeed, prison officials admitted at trial that the strip cell normally is reserved for such serious offenses as fighting or rioting.

[7] Conditions similar in some respects to those found to exist here were denounced by this Court in *Wright* v. *McMann,* 387 F.2d 519 (2 Cir. 1967). There the plaintiff alleged, among other matters, that he had been placed for 33 days (11 days nude) in a poorly-heated, filty strip cell, had no means of cleaning himself, and was forced to sleep on a concrete floor. We held that these allegations stated an Eighth Amendment claim. For other decisions condemning strip cells, see *Knuckles* v. *Prasse,* 302

Since the district court did not reach the issue of what relief should be granted, we remand with directions that the district court frame an appropriate injunction and that it determine what damages, if any, should be awarded. Our remand is not to be construed as any expression of opinion on our part, one way or the other, on the issue of damages.

II.

Appellant's First Amendment claim is that he was denied his constitutional right to free exercise of religion during the periods he was held in various segregation units.

A prisoner confined to any segregation unit at the Somers prison, whether it be administrative segregation, punitive segregation, maximum punitive or the strip cell, is not permitted to visit the prison chapel. Catholic mass is performed in the chapel only, with the exception of an occasional service performed in the segregation unit. An inmate in segregation therefore normally cannot attend mass. The Catholic chaplain, however, does make himself available to administer the sacraments — penance and Holy communion — in the segregated unit itself. Chaplain Stanley, the Catholic chaplain at Somers, testified that LaReau never requested his services in the segregation unit but continually demanded access to the chapel. The Chaplain also testified that he had taken care of LaReau's spiritual needs adequately and "to the best of [his] ability".

Segregated prisoners are not permitted to attend mass in the chapel, according to the testimony of prison officials, because to

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F.Supp. 1036 (E.D. Penn. 1969) (no windows or light, poor sanitary conditions, lack of hygienic materials); *Hancock* v. *Avery* 301 F.Supp. 786 (M.D. Tenn. 1969) (unlighted, no furnishings, "oriental" toilet flushed from outside, poor sanitary conditions); *Jordan* v. *Fitzharris*, 257 F.Supp. 674 (N.D. Calif. 1966) (no furnishings, "oriental" toilet flushed from outside, totally dark, no hygenic materials).

In *Sostre* v. *McGinnis*, 442 F.2d 178 (2 Cir. 1971) (en banc), *cert. denied sub nom. Sostre* v. *Oswald*, 404 U.S. 1049 (1972), we held that segregated confinement for long periods is not violative of the Eighth Amendment when the following conditions exist: basic implements of personal hygiene, opportunity for exercise, reading matter, communication with other prisoners. Many of the favorable conditions specified in *Sostre* obviously were not present at LaReau's confinement.

allow them to do so would be to invite trouble. Most of these inmates are disciplinary problems and many of them are would-be leaders of mass prison disruption. LaReau, for example, was a compulsive letter-writer and had been involved in several major disputes, including a widespread hunger strike. To allow him to attend Sunday mass along with the general prison population, according to the prison authorities, would facilitate a major incident by providing the inmates with a rebellious leader.

Sherbert v. *Verner,* 374 U.S. 398 (1963), firmly established that the First Amendment guarantees to every person the right to participate in acts and practices which are an integral part of his religious faith. *Sherbert* also announced that a balancing principle should be employed to determine whether the free exercise clause has been infringed by a secular regulation: the state can deny a person participation in religious exercises if the state regulation has an important objective and the restraint on religious liberty is reasonably adapted to achieving that objective.

Attendance at Sunday mass clearly is a fundamental practice in the Catholic religion. We hold, however, that the prison authorities at Somers have denied segregated prisoners attendance at mass for a substantial reason. See *United States ex rel. Cleggett* v. *Pate,* 229 F.Supp. 818 (N.D. Ill. 1964). They have made a reasonable judgment, one which we are not inclined to disturb, that unruly prisoners should not be given the opportunity to instigate trouble with the general inmate population. Such a hazard can be avoided only by denying these prisoners access to the chapel for Sunday mass. [8] Judge Clarie found, and the record supports the finding, that LaReau is a potential instigator of large-scale disorder.[9] We therefore affirm the judgment of the court below on the First Amendment claim.

Affirmed in part; reversed and remanded in part.

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[8] This is not a case where prison officials have discriminated against a particular religion or religious sect. See *Sewell* v. *Pegelow,* 291 F.2d 196 (4 Cir. 1961).

[9] This is not to say that every prisoner in segregation lawfully can be prevented from attending church services in the chapel. Not all segregated prisoners are potential troublemakers; so some discrimination must be made by prison authorities among the inmates in the segregation unit.

MOORE, *Circuit Judge* (dissenting):

The Court's opinion appears to contain two findings of violations of LaReau's Eighth Amendment rights. The Court clearly says it believes the conditions in the strip cell fall below the Constitutional minimum. In footnote six, however, the Court adds:

> Even if the strip cell could be justified for serious offenses, it was a grossly severe penalty for LaReau's offense.

I believe the Court errs in both of these holdings.

The majority focuses on two aspects of strip cell confinement which they believe combine to violate the minimum standards of the Eighth Amendment. The "Chinese toilet" and the almost continuous darkness are said to have severed LaReau's "contact with reality" and to have "seriously threatened . . . [his] physical and mental soundness. . . ." *Wright* v. *McMann*[1] and *Sostre* v. *McGinnis*[2] are cited to support this conclusion. Each of these cases involved fundamentally different factual situations; neither supports this decision.

Wright involved two separate strip cell incarcerations of twenty-one and thirty-three days. In addition, the conditions of Wright's incarceration were much more severe than those at Somers. Wright was allegedly required to stand at attention for more than fourteen hours each day, to sleep nude in an unheated cell on a rough concrete floor with the cell's windows open to subfreezing temperatures, and to exist there amidst encrusted filth and slime deposited by previous occupants of that cell. At Somers the *maximum permissible* stay in the strip cell was eight days.[3] LaReau does not claim to have spent even this much time there.[4] Further-

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[1] 387 F.2d 519 (2d Cir. 1967).

[2] 442 F.2d 178 (2d Cir.), *cert. denied*, 404 U.S. 1049 (1971), *cert. denied*, 405 U.S. 978 (1972).

[3] The Commissioner of the Connecticut Department of Corrections could, on application, extend this time. He testified at trial that no such application had ever been made.

[4] LaReau spent from February 6, 1970, to February 11, 1970 in the strip cell.

more, LaReau was never forced to stand at attention or sleep nude on a freezing concrete floor. (At Somers a mattress is provided in the strip cell for seventeen hours each day.) It is also clear that the Somers strip cell was relatively antiseptic when compared to the cell in *Wright*, which was said to have been covered with the accumulated bodily wastes of its numerous previous occupants. I think it obvious that the allegations in *Wright* go far beyond the conditions actually experienced by LaReau.

The Court states that the conditions in the Somers strip cell fell below the minimum standards set forth in *Sostre* v. *McGinnis*.[5] While this may be true with respect to some of these standards, it is also true that the Sostre standards were never meant to be applied to strip cells.

The *Sostre* opinion concerned "punitive segregation" (a less restrictive, less punitive status than the strip cell), and the standards there enunciated were issued in the context of confinements of extensive duration; Sostre had been confined to punitive segregation for more than twelve months. Surely the minimum standards for a less restrictive mode of incarceration should not be applied so as to prohibit strip cell confinements altogether. At the least, it is clear that the *Sostre* Court never intended such a prohibition.[6] LaReau was placed in the strip cell for violating prison rules applicable to the "administrative segregation" section of the Somers facility. The *Sostre* court, by specifying standards applicable to solitary confinement, did not intend to eliminate the possibility of disciplining inmates who violate these very rules.[7] Prison authorities must have the option of imposing more restrictive

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[5] See note seven to the Court's opinion.

[6] *In Sostre* the Court said:

> For a Federal Court, however, to place a punishment beyond the power of a state to impose on an inmate is a drastic interference with the state's free political and administrative processes.
> 442 F.2d at 191.

[7] It is not clear that the "solitary confinement" or "punitive segregation" status in *Sostre* (which dealt with a New York state prison) is precisely analogous to the "administrative segregation" status in Connecticut's prisons. It is clear, however, that the *Sostre* court was not dealing with the most severe form of disciplinary segregation in the New York State prison system. *Compare Sostre v. McGinnis, supra,* with *Wright v.*

rules and conditions of imprisonment than the general standards of *Sostre*, if only to insure that their rules implementing these standards are obeyed.

Furthermore, it should be obvious that the minimum standards for confinements which may last a year or longer must be higher than those applicable to confinements which by regulation could not be imposed for more than eight days and which at Somers averaged only five days. *Sostre*, too, is no authority for the decision of the Court here.

The most serious flaw in the Court's decision is its determination that the conditions in the Somers strip cell "seriously threatened the physical and mental soundness of its unfortunate occupant." The Court says that it accepts Judge Clarie's "careful and detailed findings of fact."[8] These findings disclose that LaReau had seen the prison's psychiatrist and psychologist, that the prison psychiatric department had an extensive file on LaReau — including several psychiatric evaluations, and that he was visited *weekly* by the prison doctor. Despite the presence of these medically trained personnel who were acquainted with LaReau and presumably aware of the possible hazards of various aspects of prison life (including the strip cell), the Court today offers its own judgment that the strip cell conditions do, as a matter of law, threaten an inmate's health and sanity. In my opinion it is not our appellate function to ignore the findings of a Judge who, after personally viewing the conditions at Somers, found them to be neither cruel nor unusual. But it is perhaps an even more serious error to substitute for the collective medical expertise of the Somers doctors this Court's judgment that conditions there threatened an inmate's physical and mental soundness. Surely, such a determination should be left to those with knowledge of medicine, psychiatry, and psychology. Such medical judgment should be entitled to great weight in our Court, especially in a case such as this, where the experts also had personal knowledge of the inmate and, presumably, of the conditions he faced.

McMann, supra. The strip cell confinement we are considering here is the most severe mode of confinement at Somers. There is absolutely no indication in *Sostre* that the Court was there establishing the minimum Constitutional standards for all forms of incarceration.

[8] See note three to the Court's opinion.

The opinion of the Court further states that even if the conditions in the strip cell were not *per se* cruel and unusual, confining LaReau there for the mere possession of contraband was a "grossly severe penalty". At the time LaReau was found with his contraband he was in administrative segregation. The more innocuous items found in LaReau's possession [9] would not have been deemed contraband had he not been assigned to this special section of the prison. One of the items of contraband, however, was a rope made from towels. This would have been contraband even if LaReau had been assigned to the general prison population, since rope can be used as a weapon and as a means of escape. Since the Court finds elsewhere in its opinion that LaReau was a "would-be leader of mass prison disruption", it would seem that his possession of a rope would not merely warrant, but demand, the strong disciplinary measures taken in this case. It must be remembered that LaReau had escaped from custody twice in the preceding seven months and that it was for these escapes that he had been placed in administrative segregation. Considering all of these factors, I have no trouble finding that the prison authorities were justified in meting out to LaReau the discipline they felt the situation required.

In my opinion this is not a proper case for federal judicial interference in the day-to-day administration of a state prison.[10] There are, of course, occasions when the Federal Courts must step in to protect the Constitutional rights of prisoners. *See e.g., Martinez* v. *Mancusi,* 443 F.2d 921 (2d Cir. 1970), *cert. denied,* 401 U.S. 983 (1971). But here we have a prisoner assigned to a section

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[9] These items included a newspaper, a magazine, a pencil, instant coffee, and Preem. *LaReau* v. *MacDougall,* ___ F.Supp. ___ (D. Conn. 197_).

[10] I believe the majority ignores the clear import of the cases in this Circuit and in the Supeme Court when it finds that this case warrants federal court interference with the operation of the Somers prison. "There is no doubt that discipline and administration of state detention facilities are state functions. They are subject to federal authority only where paramount federal constitutional or statutory rights supervene." *Johnson* v. *Avery,* 393 U.S. 483, 486 (1969). "States should be given broad discretion to determine which of a variety of possible rehabilitative and disciplinary techniques will be most effective with a given prisoner in a given situation." *Baldwin* v. *Smith,* 446 F.2d 1043, 1044 (2d Cir. 1971).

of Somers set aside for trouble-making inmates, who was found to possess escape materials. This prisoner had been recaptured from his last successful escape only two months before. I cannot agree that under these circumstances we, who are not responsible for administering prisons, should interfere with the judgment of those who are charged with this responsibility.[11]. These prison officials are experienced in such matters and familiar with all the facts and circumstances surrounding any particular incident. I believe this makes them much better able to make judgments as to the proper type and duration of disciplinary measures than judges ensconced in the quietude of a Federal Courthouse. In short, the Warden at Somers does not presume to tell us how to solve our problems; I do not thnk that we are qualified to solve his. Short of the grossest violation of Constitutional rights we should stay within the field of our own competence and not be parties to a possible third escape.

I would affirm.

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[11] In *Sostre* v. *McGinnis, supra,* the Court said:

> It is not only that we, trained as judges, lack expertise in prison administration. Even a lifetime of study in prison administration and several advanced degrees in the field would not qualify us as a *federal court* to command state officials to shun a policy that they have decided is suitable because to us the choice may seem unsound or *personally* repugnant.
>
> 442 F.2d at 191 (emphasis in original).

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the sixth day of March, one thousand nine hundred and seventh-three.

DONALD JOSEPH LaREAU,

Petitioner-Appellant,

v.

Docket No. 71-1555

FREDERICK E. ADAMS, *Warden, Connecticut State Prison,* and ELLIS C. MacDougall, *Commissioner of Corrections.*

Respondents-Appellees.

A petition for a rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the appellees and no active circuit judge having requested that a vote be taken on said suggestion.

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

A. DANIEL FUSARO
Clerk

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals in and for the Second Circuit held at the United States Court House, in the City of New York on the sixth day of March one thousand nine hundred and seventy-three.

Present:

HON. LEONARD P. MOORE,
HON. J. JOSEPH SMITH,
HON. WILLIAM H. TIMBERS,
Circuit Judges.

Docket No. 71-1555

DONALD JOSEPH LaREAU,

Petitioner-Appellant,

v.

FREDERICK E. ADAMS, *Warden, Connecticut State Prison,* and ELLIS C. MacDOUGALL, *Commissioner of Corrections.*

Respondents-Appellees.

A petition for a rehearing having been filed herein by counsel for the appellees,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

A. DANIEL FUSARO
Clerk

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals in and for the Second Circuit held at the United States Court House, in the City of New York on the fifth day of January one thousand nine hundred and seventh-three.

Present:

HON. LEONARD P. MOORE,
HON. J. JOSEPH SMITH,
HON. WILLIAM H. TIMBERS,
Circuit Judges.

Docket No. 71-1555

DONALD JOSEPH LaREAU,

Petitioner-Appellant,

v.

FREDERICK E. ADAMS, *Warden, Connecticut State Prison,* and ELLIS C. MacDOUGALL, *Commissioner of Corrections,*

Respondents-Appellees.

A petition for a rehearing having been filed herein by counsel for the appellant,

Upon consideration thereof, it is

Ordered that there be served and filed not later than January 15, 1973, the following:

(1) By counsel for the appellant, an answer to the petition

for rehearing, together with a brief addressed to the issue raised in the petition.

(2) By counsel for the appellees, a brief in support of the petition.

The Court would appreciate specific references in the brief to Connecticut law, preferably decisions by the Connecticut Supreme Court, dealing with the nature of an action for mandamus in the contex of appellees claim of res judicata and collateral estoppel.

A. DANIEL FUSARO
Clerk

No. 162759
and
No. 163871

DONALD J. LaREAU	Superior Court
v.	Hartford County
FREDERICK E. ADAMS, *Warden*	June 8, 1970

MEMORANDUM OF DECISION

At the outset it should be noted that the parties have agreed that the evidence produced at the hearing could be used in both matters. It is noted that the hearings given to the petitioner comprise over 270 pages of transcript. He cannot be heard to complain that he was not allowed a full presentation of his various claims.

Some of the background history necessary to evaluate the petitioner's claims is set forth: On February 2, 1966 the petitioner was sentenced to the State Prison for a term of not less than two nor more than six years. He was paroled on this sentence on January 10, 1969. While out on parole, he is alleged to have committed other crimes which resulted in his return to the correctional institution. At least two of the charges in a ten count information lodged by the State's Attorney at Hartford have to do with escape from correctional institutions. A warrant for reimprisonment was also lodged at the State Correctional Institution by the Board of Parole, which is dated April 22, 1969. The original prison term does not expire until January 31, 1971.

The petitioner claims that his status was that of a prisoner awaiting trial and as such he was entitled to certain rights which were denied to him.

The petitioner's first claim is that he was denied the right to practice his religion by the respondent in that he was placed in a segregation unit continuously since November 28, 1969. As a member of such a unit he was not allowed to attend Roman Catholic Mass with the general prison population. This claim is found to be

a correct statement of the fact. However, it is also true that no inmate of the segregation unit is allowed to attend religious services in the Chapel. Therefore, the petitioner is not being treated differently from any other segregation inmate. He admits that he can have and has had visits from the Catholic chaplain whenever he requested the same.

The evidence indicates that the petitioner is unwilling to accept the rules and discipline which must attend the operation of a prison. It is found that the rule preventing the petitioner from attending general chapel services is not an unreasonable one with regard to the petitioner.

The petitioner alleges that he has been subject to cruel and unusual punishment in that he has been incarcerated in a small, unsanitary and extremely unpleasant cell without a mattress. He further claims that while there he was not given any sugar or salt. He was allowed no shoes, no bible, and no dessert. It is admitted that he was in a so-called strip cell from February 5, 1970 to February 11, 1970. He was placed in a strip cell because of a penalty for violation of the regulations — possession of contraband. The court has seen the cell and cannot accept the prisoner's description of it.

There seems to be no issue as to the violation of prison rules. Therefore, his confinement in a strip cell for disciplinary purposes can be justified in terms of permissible prison management. He claims that he is subjected to embarrassing searches of his body cavities when he leaves the institution and upon his return. This is said to be a normal routine at the prison which is as unpleasant to the searcher as it is to the prisoner.

The remaining claims have to do with the petitioner's outgoing mail — to his lawyers, to the Clerk, to the Court and to the prosecutor. A review of this portion of the evidence indicates no aggrievement. None of the letters sent to the lawyers had any useful purpose. The petitioner seems to be attempting to establish some sort of record for letter writing. Notwithstanding the fact that he has two lawyers, he finds it necessary to write to the warden, deputy warden, commissioner of corrections at the slightest excuse. At the hearing before the petitioner left the room, he was cautioned about his letter writing and told that there would be no decision until counsel filed the briefs and the Court had a chance to study the same. Within a week a letter came to the Clerk, the State's At-

torney, and the Court with a further copy to his own lawyer. From all the letters shown to the Court, and from those seen after the hearing, the Court can only conclude that the petitioner is a compulsive letter writer. It is concluded that his rights have not been deprived. Any censorship imposed was a necessary administrative requirement and cannot be interfered with by the Court.

The claims of this petitioner or anyone in a similar situation must be approached with the following rule in mind:

> "The matter of the internal management of prison or correctional institutions is vested in and rests with the heads of those institutions operating under statutory authority and their acts and administration of prison discipline and overall operation of the institution are not subject to court supervision or control, *absent most unusual* circumstances or absent a violation of a constitutional right." *Douglas* v. *Sigler,* 386 F.2d 684, 688.

There is no interference with constitutional rights found, nor is there any basis for a claim of cruel and unusual punishment.

Both petitions are dismissed.

SIDOR, J.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DONALD JOSEPH LaREAU,
Petitioner,

v -vs-

ELLIS C. MacDOUGALL, *Commissioner of Corrections for the State of Connecticut,* and
FREDERICK E. ADAMS, *Warden, Connecticut State Prison,*

Respondents.

Civil Action No. 14035

MEMORANDUM OF JUDGMENT

This civil rights complaint was filed September 23, 1970, pursuant to 42 U.S.C. § 1983 and alleged jurisdiction under 28 U.S.C. §§ 1343(3) and 1651. The prepayment of fees and costs were waived and the Court appointed an attorney to represent the petitioner, as provided in 28 U.S.C. § 1915. Counsel then filed a substituted complaint in four counts, setting forth the petitioner's claims for relief in greater detail.

In the first count he alleges a violation of freedom of speech under the first amendment and complains of (a) administrative censorship or refusal to mail correspondence to the petitioner's family and friends; (b) censorship or refusal to mail correspondence to his attorneys; and (c) censorship or refusal to send mail to a state court. The second count alleges a constitutional denial of freedom of religion claiming that he has been denied the opportunity to practice his religion, because he was denied permission to attend mass in the prison chapel, receive the sacraments or participate in any ceremony prescribed by his religion. The third count alleges cruel and unusual punishment, because he was placed in a stripped cell without adequate sanitary and living facilities and for inadequate reasons. The fourth count alleges a violation of procedural due process, because on certain occasions punishment had been imposed without affording him the opportunity of appearing

before the prison disciplinary board; and on those occasions when a hearing was allowed, minimal due process procedures were not afforded him.

The petitoner's prayer for relief requests that this Court enjoin the defendants from (1) reading, censoring or refusing to mail correspondence to any member of his family, his friends, attorneys or the courts; (2) disciplining him for anything written to a court or anything of a legal nature written to his attorney or to his family or to a prison administrator; (3) placing him in solitary confinement and thereby depriving him of good time without complying with minimal due process requirements; (4) disciplining him because of statements in letters to persons outside the prison, unless those statements present a clear and present danger of disrupting the security of the institution or some justifiable purpose of imprisonment; and (5) denying him the right to practice his religion while in solitary confinement. The petitoner also requests that this Court order the restitution to him of all good time lost, while he was confined in solitary; also all such time as he lost, because of letters which he attempted to send to his family, friends, prison officials, his attorney or the prison administration board; and a further demand that he be granted a judgment for substantial monetary damages.

The petitioner's prison record, insofar as it relates to his present incarceration, discloses that he was convicted on February 2, 1966, on a charge of indecent assault and sentenced to the State Prison for a term of not less than two nor more than six years. On January 10, 1969, he was paroled from this sentence, but was returned as a parole violator on July 25, 1969, having been arrested on July 10, 1969, on a charge of forgery (Tr. 46). He was presented in court on May 13, 1970, and pleaded guilty on only two of the counts (four and ten) of the ten-count information.[1] Count four charged an escape from the Hartford Correctional Center on November 16, 1969, and count ten charged an escape from custody on August 25, 1969, at the Manchester, Connecticut Police Station while temporarily confined, awaiting a preliminary hearing in the state court. On May 29, 1970, the petitioner was sentenced to serve not less than five nor more than ten years in the state prison on the fourth count, and one year on the tenth count, a total effective sentence of not less than five nor more than eleven years; this sentence was to run concurrently with any time then remaining to be served on the prior conviction of February 2, 1966.

He completed serving the latter sentence as of December 22, 1970. (Tr. 364).

JURISDICTION

The petitioner claims jurisdiction in this Court pursuant to 42 U.S.C. §§ 1983 and 1343. The defendants argue, however, that several of his claims were litigated in prior habeas corpus petitions in the State Superior Court, after a full hearing, and were adversely ruled upon. They claim that under such circumstances, this Court should apply the doctrine of collateral estoppel and res judicata to those issues previously decided by a final state court judgment.

These state habeas corpus proceedings were custodial in character and were limited in scope to the validity of time credits used to compute the petitioner's term of incarceration. *See Saia v. Warden,* 25 Conn. Supp. 519 (1964); *United States v. Bibb,* 249 F.2d 839 (7th Cir. 1957). The allegations here, on the other hand, are concerned primarily with administrative violations, which if true, could constitute a deprivation of federal constitutional rights, which are of concern to the court. Not only is the plaintiff seeking equitable relief, but also monetary damages. The United States Supreme Court in *McNeese v. Board of Education,* 373 U.S. 668, 674 (1963), clearly set out the jurisdictional guide lines in such matters when it said:

> ". . . (P)etitioners assert that respondents have been and are depriving them of rights protected by the Fourteenth Amendment. It is immaterial whether respondents conduct is legal or illegal as a matter of state law. *Monroe v. Pape, supra* (365 U.S. at 171-187). Such claims are entitled to be adjudicated in the federal courts."

Also see Houghton v. Shafer, 392 U.S. 639 (1968); *Wright v. McMann,* 387 F.2d 519 (2d Cir. 1967); and *Sostre v. McGinness* 334 F.2d 906, *cert. denied* 379 U.S. 892 (1964).

The Court finds federal jurisdiction to be applicable to all of the human rights issues raised by the petitioner in this action, without this Court's being conclusively bound by the state court's findings in the prior habeas corpus hearings on factually similar

issues. The petitioner's prior state habeas corpus petitions which were unfavorably acted upon do not constitute a statutory election precluding federal jurisdiction under 42 U.S.C. § 1983.

First Count

The mail censorship issues and the prepayment of postage requirements have been substantially eliminated by the new mailing regulations adopted May 25, 1970,[2] subsequently amended effective February 18, 1971. Paragraph #6 of said regulations permits unrestricted inmate correspondence with attorneys, the courts and multiple other public officials whose duties might relate, directly or indirectly, to the prisoner's incarceration; and Paragraph #9 thereof prohibits censorship or delay in the handling of correspondence addressed to prisoner's legal counsel or the courts. (Tr.290). Assurance of this free access to the courts is provided under Paragraph #8, where it states that first class postage will be provided free by the state, where it is required for mail to be sent to judges or the courts; and all requests for a speedy trial under the Interstate Compact Agreement may now be sent by prepaid certified mail at state expense. (Tr. 267). This rule of free postage however, is applicable only where the inmate has less than five dollars balance in his commissary account. (Tr. 281). Regulation #3 permits unlimited personal correspondence at the inmate's expense with a maximum of seven approved outside correspondents on the inmate's mailing list. (Tr. 129). Those who have less than a five dollar credit balance in the commissary account are provided with two free sheets of postage paid stationery for personal correspondence. (Tr. 154). The foregoing rules are recognized by this Court as being consistent with reasonable standards of prison postal procedure.

> "The generous scope of discretion accorded prison authorities also heightens the importance of permitting free and uninhibited access by prisoners to both administrative and judicial forums for the purpose of seeking redress of grievances against state officers. The importance of these rights of access suggests the need for guidelines both generous and specific enough to afford protection against the reality or the chilling threat of administrative infringement."
>
> . . . .
>
> "We need only add that when we say there may be cases which will present special circumstances that *would* justify

> deleting material from, withholding, or refusing to mail communications with courts, attorneys, and public officials, we may necessarily rule that prison officials may open and read all outgoing and incoming correspondence to and from prisoners." *Sostre v. McGinnis,* F.2d (2d Cir. Feb. 24, 1971 *in banc)* Slip op. 1637 at 1677, 1679.

Since present prison mailing practices do conform with the foregoing standards established by the appellate courts, even if individual instances of violation were found to have occurred in the past, no grounds for equitable relief now exists.

> ". . . (I)t is elementary that a court of equity will not enjoin one from doing what he is not attempting and does not intend to do." *New Standard Pub. Co. v. FTC,* 194 F.2d 181, 183 (4th Cir. 1952); *Megron v. Wallace,* F.2d (2d Cir. Jan. 4, 1971), Slip op. 1111 at 1122.

Second Count

When LaReau arrived back in prison as a parole violator (Tr. 372), he was placed in temporary quarantine in the administrative segregation section from July 25, 1969 to August 14, 1969. When this period had elapsed, he was released into the general prison population. (Tr. 373). On August 22, 1969, he was transferred to the state jail and escaped from the Manchester Police Station on August 25, 1969, while temporarily detained awaiting arraignment in the 12th Circuit Court. He was apprehended and returned to the prison September 17, 1969, where he was placed in administrative segregation. On September 29th, he was temporarily taken to the state jail and returned October 1, 1969. He was transferred on November 13, 1969 to the state jail and he escaped from custody again on November 16, 1969. He was apprehended and returned to the prison on November 29, 1969, where he was assigned to administrative segregation. (Tr. 374).

There were four periods during his confinement in which the petitioner was administratively disciplined and punished after due hearing before the prison disciplinary committee. These incidents resulted in his being ordered to serve time in punitive segregation or maximum punitive (a strip cell). Prisoners who are not in general population are denied the right to attend chapel services as well as

many other privileges. LaReau complains that he, as a Roman Catholic, was denied the privilege of attending mass and that such a denial violates his constitutional rights of freedom of religion under the first amendment.

The prison chaplain, Father Shanley, testified that LaReau did attend mass regularly in the chapel, when he was in the general population (Tr. 403). The regular Sunday masses in the chapel are at 8:00 A.M. and 10:00 A.M. The chaplain explained that he customarily visited the segregation areas at any reasonable time upon request to hear confessions and administer the sacrament of holy communion. Adequate facilities were available to afford privacy and in his opinion the inmates' spiritual needs were adequately fulfilled. (Tr. 409). Contrary to LaReau's claims, that Father Shanley refused to come to the segregation area to administer the sacraments to him, the chaplain denied that he had ever refused to administer to LaReau's spiritual needs when called upon to do so. The Court accepts the testimony of Father Shanley as being credible.

The Commissioner of State Corrections explained that the major disciplinary problems of the institution are housed in the administrative block, which is comprised of approximately sixty cells. Many of the inmates detained there have serious disciplinary records and are the would-be leaders around whom other inmates rally their support. (Tr. 263). The Commissioner estimated that about 15% of the prison population have some kind of psychosis; 25% have some deep-seated emotional difficulty or character disorder; and 20% are hardened criminals, who are anxious to continually cause strife in the daily operation of the prison. It is for this reason that the prison regulations provide that only four inmates from the segregation area are allowed out of their cells at one time for recreation; otherwise, there would be a grave danger that they might take over the cell block. To move these men so that they might attend mass in the chapel would invite major disciplinary incidents. This rule has not been applied to LaReau in any discriminatory manner; it has been applied equally to all inmates. (Tr. 263-65).

There has been no unreasonable denial to this petitioner of his right to receive the sacraments of his religion or to otherwise practice his religious beliefs. The security of the prison is the paramount factor and the freedom of movement of those inmates requiring segregation is strictly regulated, because they are considered

dangerous and unduly troublesome within the prison population. To permit LaReau to attend chapel while in segregation, would require that everyone else in the same status would have to be similarly treated. Such a rule would require an administrative decision founded on professional penal experience and common sense. The Court finds that the Commissioner's decision was not arbitrary or capricious, but necessary for good order and security within the institution. *See Wright v. McMann,* 387 F.2d 519, 526, n. 17 (2d Cir. 1967); *Cleggett v. Pate,* 229 F. Supp. 818, 819-821 (N.D. Ill. 1964); *also see, Cooper v. Pate,* 378 U.S. 546 (1964).

Third Count

The third count alleges that the petitioner was subject to cruel and unusual punishment by reason of his confinement in a stripped or barren cell, in violation of the eighth amendment to the United States Constitution. He represents that this confinement in a stripped cell was cruel per se and that the punishment meted out to him was disproportionate to the violations which he was found to have committed. Another phase of his claim was that his long confinement in administrative segregation without adequate exercise, also constituted cruel and inhuman punishment.

There are three general categories of segregation which deprive an inmate of the general privileges, which are afforded to all those in the open prison population. The first grouping is administrative segregation; the second, punitive segregation; and the third is the stripped cell, now called maximum punitive segregation. The first category requires a continuous 24-hour cell confinement, except for one hour of recreation each day. Prisoners so confined are provided three full meals, a bed with mattress, a desk, writing utensils with writing supplies, toilet facilities, a lavatory and general toiletries. They are allowed the use of a radio, newspapers, magazines, and general commissary items, except that they are not free like those in the general prison population to go to the store to make their own purchases. They are also permitted to have reasonable visitation privileges to the prison law library.

Punitive segregation, on the other hand, is limited to not more than 30 days (Tr. 30, 308), and it is imposed only after a formal notice of charges and the holding of a hearing before the disciplinary committee. Those in punitive segregation are provided with three

meals a day, but without dessert or condiments. They are furnished a mattress, but only between the hours of 3:00 P.M. and 8:00 A.M.; there are toilet and lavatory facilities; sheets and blankets are provided; radios and reading materials are not permitted, but a bible will be furnished if requested.

Maximum punitive segregation is limited to no more than eight days, except with the special approval of the Commissioner of Corrections or his deputy. The average period for this type of punitive incarceration is five days. This punishment is imposed only after a formal written notice, followed by a hearing before the disciplinary committee. Three meals per day are provided, but with no condiments, desserts or coffee with cream and sugar, (Tr. 316); a mattress is provided between 3:00 P.M. and 8:00 A.M., and a blanket is furnished when the room temperature so requires. The size of the cell is approximately 6′ x 10′ x 8′; it contains a regular commode with a sink; the inmates are permitted tooth paste and a toothbrush on request and they may have a bible.

Since the original construction of the prison, there has been specially constructed in addition to the regular maximum punitive cells, an additional series of stripped cells, so-called, that are barren of any commode or sink. These units are substantially the same as the maximum punitive cells (Tr. 321), except that they have what is called a Chinese toilet. These latter facilities are built into the floor by providing a hole with a grill (Tr. 371) in a corner of the cell. This toilet may be flushed by a manually controlled valve outside the cell. There is no built-in ledge in these units on which to sleep (Tr. 388); lighting is provided by a fixture located outside the cell, which shines through a glass in the rear cell wall. General prison policy requires that no dark cells should exist (tr. 312), however, the Commissioner was unable to say with certainty, that any written policy existed, which directed guard personnel to provide lighting when requested by a cell occupant. Prison guard Waldo testified that the light in the strip cell was lighted during feeding time, thus inferring it was not otherwise lighted. (Tr. 215).

This stripped cell (maximum punitive) was the same size as the ordinary regulation cell, except that after one enters through the steel access door, there is a space or entryway of approximately two feet, before one reaches the exterior cell bars fronting on the cell. Each unit is completely separated and isolated from the adjoining cell units by walls of solid cement. When the exterior steel door

is closed, the opening in the door may be covered by a metal plate, so that inmate noise and disturbance is eliminated. Such cells are primarily used to isolate an inmate who has made himself generally obnoxious in the maximum punitive area by yelling, screaming, and causing general annoyance. Such conduct, of course, cannot be permitted to go unchecked, because the noise is carried into other areas through the ventilation duct work and is likely to invite violent response from other inmates in the same cell block or even spread throughout the entire institution. These isolated stripped cells provide a complete solitary confinement area for those who become incorrigible. It also assures the existence of a facility where physical damage to fixtures or prison property cannot occur.

A regulation was promulgated by the Corrections Commissioner on March 2, 1970, which prescribed that inmates in punitive segregation must receive a daily minimum of 2300 calories of food per day. The prison officials misinterpreted this to mean, that if the minimum food service was provided in one meal, that would fulfill the rule requirements. This error was discovered by the administration and corrected by a directive in August 1970. Contrary to LaReau's testimony, the prison records do not indicate that he had served time in punitive segregation during this specific period between March 2, 1970 and August 1970, thus he could not claim to have been subjected to the misapplication of this regulation.

All inmates are encouraged to write to the Commissioner of Corrections, the Warden or his deputy, concerning any prison matter affecting them. This correspondence is sealed and uncensored and a special depositary is provided for their transmittal. Such a letter of criticism was addressed to Assistant Warden Stout by the plaintiff;[3] but at the end of his message, he wrote a postscript which challenged and ridiculed prison discipline. It said, "Rules, Rules, Rules. The petty whims of petty men." (Prison discipline, 1825-1925), (Tr. 166).

On October 5, 1970, at 3:30 P.M., promptly after the receipt of this letter by the assistant warden, LaReau was given written notice of charges for insolence and disrespect and was advised that the matter would be heard by the board on October 6, 1970. After a full hearing, at which the petitioner personally appeared and was given the opportunity to explain his version of the alleged misconduct, the disciplinary board found him guilty of insolence and dis-

respect. It ordered that he be assigned to punitive segregation indefinitely. Such an indefinite sentence could not extend beyond eight days, (Tr. 253); it usually averaged about five days. The policy was that if the inmate straightened out and behaved, he would be released from this punitive segregation. In this instance he actually served seven days.

On January 6, 1970, the petitioner, a Caucasian, sent a letter to the Commissioner of Corrections, which was not only written in derisive terms, but also in Negro dialect. It said, "I is gotta idea, but because you is cruel and inhuman, I ain't gonna tell you. I want to go to da church dis Sunday . . . ya hear me boy." (Tr. 256). This letter was referred to the disciplinary committee with an order that LaReau be tried on a charge of insolence to the Commissioner. (Tr. 260). LaReau was given a hearing after notice and ordered to punitive segregation from January 30, 1970 until February 6, 1970 (Tr. 376). During this period, a further misconduct report was filed against him, to the effect that he was found in possession of contraband. These items were described as a rope fashioned from towels, a newspaper, a magazine, pencil, preen and instant coffee (Tr. 376). For this violation of regulations, he was confined to the stripped cell (maximum punitive) from February 6, 1970 to February 11, 1970 (Tr. 377).

Thereafter, he was returned to administrative segregation and remained there until July 23, 1970, when he was returned to general population. To have allowed him back into the general population immediately would have encouraged him to be an inmate leader and invite further disciplinary problems. (Tr. 263).

It is the petitioner's claim that the stripped cell and the conditions of confinement therein constituted cruel and unusual punishment per se. The Court personally viewed these cells on May 18, 1970, accompanied by counsel for both parties. The Court saw the physical facilities provided for the various categories of segregation as hereinbefore described. It finds that these cells, when properly used for limited periods according to the existing rules, do not constitute cruel and abusive punishment per se; and that their use did not become such in the manner in which punishment was administered in LaReau's case. In reaching this conclusion, this Court concurs in the findings of the state court."[4]

Petitioner's counsel claimed that the Court should not consider LaReau's incarceration in the maximum punitive unit (Tr. 44) without first having him psychiatrically examined to determine whether such solitary confinement might affect his mental health, (Tr. 336, 417), and that this absence of care constituted cruel and inhuman treatment. He did not make any claim, however, that the petitioner was in fact, mentally ill at any time. (Tr. 337). Rather it is his claim that the absence of specific rules which would provide medical and professional psychiatric safeguards in each case, such as the petitioner's, supports his challenge of cruel and inhuman treatment. (Tr. 339, 417).

The Commissioner was personally aware of LaReau's problems; he had received letters from him constantly, for LaReau was a compulsive letter writer.[5] He did not regard him as being psychiatrically ill, but he did consider him to be a behavior problem and to be emotionally ill. (Tr. 330). However, his condition was not such as would warrant his receiving the attention of a psychiatrist. (Tr. 350). Between July 23, 1970 and August 19, 1970, LaReau was tested in the diagnostic center, just prior to his being assigned into general population. Medical records disclose that he was visited weekly by the doctor at the prison (tr. 415); and he was seen by the psychiatrist, Dr. Sheard, and by the psychologist O'Hara. (Tr. 421). The prison psychiatric department already had a very extensive file on LaReau, including several psychiatric evaluations. (Tr. 427, 434). Dr. Flaherty (M.D.) found LaReau to be "a fairly stable emotional individual." (Tr. 435). There was no credible evidence offered to support the petitioner's claims that he had been cruelly or inhumanly treated.

LaReau's final complaint is that minimal procedural due process was not afforded him by the disciplinary board before their imposition of disciplinary punishments. This board is ordinarily made up of four members, with a member of the medical department having the option to sit, if he so desires. (Tr. 167). It meets twice weekly (Tr. 170) and usually consists of a supervisory captain, a lieutenant, a correctional officer, and a correctional counselor. (Tr. 168). Its proceedings do not afford counsel for accused inmates and no transcript as such is kept, but the secretary does keep written notes in regard to the proceedings. All decisions of this board must be approved by the warden and are subject to final approval by the deputy commissioner. There are no written rules of conduct, nor are there any written guide lines for meting out punishment (Tr.

445), except as to limitations on maximum confinement (Tr. 309). The cases are viewed in the perspective of the inmate's overall conduct record and discipline is prescribed on the basis of common sense and experience.

When a complaint is received, a copy of the charge is delivered to the inmate by a correctional officer and the time of service is noted on the return. While there is no specific period of time required for notice to be served prior to the hearing, it is usually served about 48 hours in advance. The hearing rules do not provide that the inmate has a right to call witnesses in his own behalf or to be represented by an attorney at the disciplinary hearing.

Such a hearing does provide an adequate opportunity to be heard by a panel, after due notice, under all the existing circumstances attendant upon effective prison administration, with a right to appeal any decision to the Warden. (Tr. 444). *See, Goldberg v. Kelly,* 397 U.S. 254, 268-9 (1969); *Menechino v. Oswald,* 430 F.2d 403 (2d Cir. 1970).

LaReau's final claim of cruel and unusual punishment by prison authorities was his incarceration in administrative segregation from November 28, 1969 until June 1970, without scheduling him for regular exercise periods.

Commissioner MacDougall decided that LaReau constituted a danger to the security of the jail type of correctional center and he transferred him to administrative segregation at the state prison. (Tr. 254). LaReau had not yet been tried or sentenced on the pending criminal charges and it had been the prison policy that when a defendant had additional charges pending against him, he should be held in administrative segregation; this was particularly true when he was the subject of disciplinary problems. LaReau had already escaped from custody twice (Tr. 253-4) and his personal attitude was still non-cooperative. He remained in administrative segregation, until the disposition of the outstanding charges, which were concluded by guilty pleas on May 13, 1970, for which he was sentenced May 29, 1970. According to the Commissioner, had his attitude been better, he could have been out of administrative segregation and back in general population much earlier.[6] (Tr. 259). An inmate in a segregation area of any type was not entitled to earn the five days' statutory meritorious good time each month, as he otherwise could have had he been in general population.

Sostre v. McGinnis, supra, established the benchmark governing segregated confinement in this Circuit. He had been in continuout segregation for more than one year. In that case, the court said:

> "It is undisputed on this appeal that segregated confinement does not itself violate the Constitution . . . . Indeed, we learn that a similar form of confinement is probably used in almost every jurisdiction in this country and has been described as one of 'the main traditional disciplinary tools' of our prison systems . . . . In several states, however, incarceration in segregated cells seems to be for an indefinite period, as it is in New York. The federal practice appears to be that prisoners shall be retained in solitary 'for as long as necessary to achieve the purposes intended,' sometimes 'indefinitely.'. . . . Such analogous practices do not impel us to the conclusion that the Eighth Amendment forbids indefinite confinement under the conditions endured by Sostre for all the reasons asserted by Warden Follette until such time as the prisoner agrees to abide by prison rules — however counterproductive as a correctional measure or however personally abhorrent the practice may seem to some of us." (at 1661-1663).

LaReau's complaint is that he was not allowed any recreation periods during his close confinement in segregation. However, an overall review of the record discloses 31 trips to the state courts between November 14, 1969 and July 7, 1970;[7] 16 visitors were received; there were 40 trips to the legal room and on 30 occasions he left his cell for miscellaneous reasons.[8]

The Court recognizes the feasibility of having one hour exercise periods regularly scheduled each day for all prisoners in administrative segregation, where it is practicable. However, this Court cannot say that in light of all the factual circumstances in LaReau's case, he suffered any deprivation of civil rights of constitutional dimension.

The Court finds that LaReau's confinement to the several categories of segregation was not unlawful. The petitioner is neither entitled to monetary damages nor equitable relief. The Court finds the issues on all counts in favor of the defendants; judgment may enter accordingly.

SO ORDERED.

The foregoing opinion shall constitute the findings of fact and conclusions of law required to be filed by the Court pursuant to Rule 52(a), Fed. R. Civ. P.

The Court expresses its appreciation to Attorney Hubert J. Santos for his very thorough and scholarly representation of his client, without benefit of any professional fee or remuneration.

Dated at Hartford, Connecticut, this 19th day of May, 1971.

T. EMMET CLARIE
United States District Judge

FOOTNOTES

[1] See Return of Respondent, Paragraph 6(a) and attached Exhibit.

[2] Defendants' Exhibit "B".

[3] Petitioner's Exhibit 20.

[4] Memorandum of Decision, *LaReau v. Adams,* Docket Nos. 162759 and 163871 (Super. Ct. Hartford Cty., June 8, 1970), filed with this Court December 8, 1970.

[5] *Supra,* note 4.

[6] Defendants' Exhibit "D-1", "D-3", "D-4", "D-5" and "D-6".

[7] Defendants' Exhibit "C".

[8] Defendants' Exhibit "E".